

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

WILLIE MCGEE,

Petitioner/Movant,

v.

CIVIL ACTION NO. 2:03-2124

THOMAS MCBRIDE,

Respondent.

MEMORANDUM OPINION AND ORDER

This is an action for habeas corpus relief under 28 U.S.C. § 2254. The action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Respondent then filed a Consolidated Motion to Dismiss and for Summary Judgment [Docket 5]. The Magistrate Judge has submitted findings of fact and recommended that the court grant Respondent's Motion for Summary Judgment as to Grounds One, Two, and Three (Federal due process claim) of the Petitioner's Federal petition. These findings further recommend that the court grant Respondent's Motion to Dismiss as to Grounds Three (state law claims), Four, Five and Six of Petitioner's Federal petition for failure to state a claim cognizable under 28 U.S.C. § 2254.

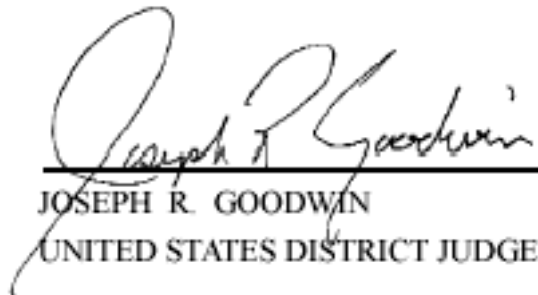
The petitioner filed timely objections to the Magistrate Judge's report and recommendation. After *de novo* review, the court **FINDS** that the objections are without merit. For the reasons stated by the Magistrate Judge, the court concludes that Grounds Three (state law claims), Four, Five and Six of Petitioner's Federal petition fail to state a claim that is cognizable under 28 U.S.C. § 2254.

Also, for the reasons stated by the Magistrate Judge, the court concludes that there is no genuine issue of material fact concerning Petitioner's claims of unconstitutional jury instructions, ineffective assistance of counsel, and sufficiency of the evidence, and that Respondent is entitled to judgment as a matter of law on Grounds One, Two, and Three (Federal due process claim).

Accordingly, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge, **GRANTS** the Respondent's Motion to Dismiss as to Grounds Three (state law claims), Four, Five and Six of Petitioner's Federal petition [Docket 5], **GRANTS** the Respondent's Motion for Summary Judgment as to Grounds One, Two, and Three (Federal due process claim) of the Petitioner's federal petition [Docket 5], **DENIES** the petitioner's application for a writ of habeas corpus [Docket 1], and **ORDERS** that this action be **DISMISSED** with judgment entered in favor of the Respondent.

The court **DIRECTS** the Clerk to send a certified copy of this Written Opinion and Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: May 31, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE